In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1498

WAVERLY THOMPSON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner renews his contentions, rejected below, that the instructions of the district court were improper because they allegedly failed to require proof that he knew of the interstate transportation of the forged securities, and because they described petitioner's co-defendants as "accomplices" instead of "alleged accomplices." Petitioner also claims that his five-year sentence penalized him for exercising his right to trial by jury and constituted cruel and unusual punishment.

After a jury trial in the United States District Court for the Northern District of Illinois, petitioner was convicted of conspiracy to transport forged securities in interstate commerce and of seven counts of aiding and abetting the commission of the substantive crime, in violation of 18 U.S.C. 2, 371, and 2314. He was

sentenced to concurrent five-year terms of imprisonment. The court of appeals affirmed (Pet. App. 1a-10a).

Each of petitioner's contentions was thoroughly considered and properly rejected by the court of appeals (Pet. App. 4a-10a), on whose opinion we rely in urging that the petition for a writ of certiorari should be denied. As that opinion makes clear, there is no need to reach the question whether under the statutes here petitioner had to have knowledge of the use of interstate commerce, because the instruction actually given "could not have led the jury into believing that it could convict this defendant, in the circumstances of this case, without deciding that he was well aware of the necessary use of interstate facilities" (Pet. App. 7a). The sentence, well within maximum limits, cannot fairly be termed illegal or cruel on any theory (see Pet. App. 9a-10a).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

JUNE 1973.

DOJ-1973-06